

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/owner: Betandri, LP, c/o Adrian Fabos
P.O. Box 753, Amherst, MA 01002

Date application filed with the Town Clerk: September 21, 2010

Nature of request: To create a two-family dwelling, with no exterior changes (except for a new exterior door), under Section 3.321 of the Zoning Bylaw

Address: 310 South East Street (Map 17B, Parcel 13, RN, RLD Zoning Districts & FC overlay district)

Legal notice: Published on October 6, 2010 and October 23, 2010 in the Daily Hampshire Gazette and sent to abutters on October 6, 2010

Board members: Barbara Ford, Hilda Greenbaum, Keith Langsdale
Town Staff: Jeffrey Bagg, Senior Planner & David Waskiewicz, Building Inspector

Submissions:

- Application, filed September 21, 2010;
- Property Summary;
- Property Information;
- Locus map;
- Aerial photograph, dated 9-10-2010;
- Site Plan dated 9-10-2010;
- Floor Plans;
- Photograph Elevations
- Management Plan;
- Lighting Plan, dated 9-10-2010;
- Landscape Plan (Existing Significant Vegetation), dated September 10, 2010;
- Town GIS zoning map;
- Lease;
- Fire Separation notes;
- DRB standards, sections 3.2040 and 3.2041;
- Application waiver list;
- Updated Parking, Lighting & Sidewalk, dated October 20, 2010;
- Letter from Kopelman & Paige, dated October 21, 2010;
- Draft Section 10.38 & Town GIS neighborhood map, prepared by Town Staff.

Site Visit: October 18, 2010

The Board members and Town staff met the applicant, Adrian Fabos, and contractor, Rick McGinn on site. The Board members observed the following:

- The location of the property on the east side of South East Street with an existing single family dwelling setback substantially from the street.
- A three (3) car garage on the south side of the driveway. The appearance and condition of the garage was noted as being questionable. An in ground swimming pool in disrepair and surrounded by a chain link fence.

- The exterior of the dwelling, location of existing lighting fixtures and existing vegetation.
- The interior of the occupied front apartment, consisting of three (3) bedrooms, and the interior of the proposed second unit, consisting of four (4) bedrooms, which was under construction and renovation. The location of the proposed new exterior door along the north façade.

Public Hearing: October 21, 2010

Town staff summarized the letter from Amherst's Town Council, Kopelman & Paige. He explained that the property is split between two (2) Zoning Districts, the Neighborhood Residence (R-N) and the Residence Low Density (R-LD) and the line crosses through the back portion of the dwelling. Although conforming to the requirements of the R-N District, the street frontage of the property does not meet the requirements of the R-LD District. Given the factual circumstances reviewed, the Town Council letter indicates that the property is conforming to the requirements of the R-N District.

Mr. Fabos was accompanied by his contractor, Rich McGinn. Mr. Fabos stated the following:

- He is seeking a Special Permit to recognize the existing use of the property as a two-family dwelling. One (1) unit, having three (3) bedrooms, is currently occupied. The Special Permit would allow completion of the second unit, which will have four (4) bedrooms.
- He is the general manager of Betandri, a Limited Partnership among his daughter, his two sisters, and two nieces. The property was purchased in March 2010 with the intent to renovate it. Although the building is structurally sound, he has been working with Inspection Services to bring the house and its major systems up to code.
- The major improvements are interior and consist of creating fire separation walls between each unit, separating the utilities for each unit and creating improved egress from both units.
- The property is located in the R-N District where a two-family dwelling requires a Special Permit. The project meets or exceeds the dimensional requirements of the Zoning Bylaw and is suitable to the neighborhood.
- He is seeking several waivers from the application requirements, as follows:
 - Site Plan prepared by Registered professional because there are no changes to the existing conditions of the grounds of the property and the base map was prepared a surveyor;
 - Landscape Plan because there are no changes proposed to the existing vegetation and adequate landscaping exists for screening and visual appeal;
- Since the original submission, a revised plan showing parking, lighting and sidewalk has been prepared indicating the location of nine (9) parking spaces. Five (5) spaces for the front unit (one space per bedroom and one visitor space) and four (4) spaces for the three bedroom (one space per bedroom and one visitor). He stated that he believes nine (9) spaces are adequate and appropriate.
- The parking will be regulated by a tenant parking permit system with signs indicating that violators will be towed.
- The lighting plan has been updated to show a new downcast light on the three (3) car garage. The new light will be shielded to prevent light trespass and will light the trash and recycling area.

- The building has egress for both units, and an additional door along the north side of the building adjacent to the other egress door is proposed. The purpose of the new egress door is to eliminate the shared common egress.
- A new partition will split the enclosed porch so that the residents of the front apartment can egress from the north side and the residents of the rear apartment can egress from the existing door on the east side.

The applicant reviewed the submitted Management Plan, and stated the following:

- He has helped manage residential rental properties since the mid 1970's;
- Currently the trash is contained in a 2 yard dumpster located to the east of the three (3) car garage, with recycling containers emptied by a hauling company every two (2) weeks;
- The parking spaces will be 9 feet x 18 feet and tenants will be notified of the parking regulations. An 18" x 18" sign will be placed in a prominent location identifying that residents without a parking sticker may be towed;
- Tenant screening process is conducted by Kendrick Property Management while landscape maintenance and snow removal will be done by the owner;
- An area for tenant storage is available in the outbuildings, but not specifically located, to prevent the unsightly storage of materials outside on the grounds;
- Provisions of the lease are tailored to the Amherst rental market which has strong language to define appropriate tenant behavior. Also he expects to have a strong presence on the property. The tenants are made aware that the use of the property is restricted to small recreation areas around the house and that the lease does not allow full access to the entire property.

Ms. Ford asked for clarification regarding the location of the trash and recycling containers. Mr. Fabos stated that he is flexible, so long as a truck can access the containers for pick up. He stated that he may reduce the size of the trash storage from the 2 yard dumpster to the standard plastic barrels provided by hauling companies.

The Board members discussed the existing and proposed exterior lighting, including location (on the dwelling and three (3) car garage), type (switched, motion and/or light sensor) and ability to adequately light the walkways and parking areas.

The Board members confirmed that tenant storage should be provided and discussed the potential location for tenant storage in the three (3) car garage or built into the existing barn.

The Board members discussed and determined that more outside areas for recreation should be made available to the tenants. The applicant stated that tenants will have access to outside areas, such as the area to the north of the dwelling near the pool and gazebo, but that he is not interested in allowing the tenants full access to the property.

Ms. Greenbaum expressed concern with the ability of the trash hauling company to turn around in the driveway.

Patricia Tuttle, 290 South East Street, spoke regarding the application. Her statements are summarized as follows:

- She resides at the property to the north, is happy that the property is being improved and the behavior of the current tenants has not been an issue.
- She questioned whether the property was formally a two-family and whether there are others in the neighborhood.
- She expressed concern regarding the total number of tenants that will be in the two-family dwelling and that it lends itself to being a different kind of neighbor than a single family dwelling.
- She agreed that good property management requires the owner to have a significant presence on the property.

Town staff explained that if issued, the Special Permit would have conditions requiring compliance with the Section of the Zoning Bylaw which limits the number of tenants to four (4) unrelated people in each unit.

Leonard Costa, 320 South East Street, spoke regarding the application. His statements are summarized as follows:

- He is the former owner of the subject property and he currently resides at 320 South East Street which is the frontage lot to the south.
- He expressed concerns regarding the house at 320 South East Street being approximately 16 feet from the driveway of the two-family dwelling; the speed at which vehicles travel on the driveway; and, that a two-family dwelling would increase the number and frequency of vehicles.
- He expressed concern with the existing lighting on the south side of the dwelling shines onto his property.
- He stated that the barn discussed for potential storage was subject to significant flooding and freezing in the winter and may not be useful for dry storage.

Paul Tuttle, 296 South East Street, spoke regarding the application. His statements are summarized as follows:

- He resides on the property to the north and east of the subject property and that the property lines, which were recently re-surveyed, are inaccurate.

Town staff stated that the accuracy of the property lines is not particularly relevant to this application because there are no changes to any of the existing buildings or property. Additionally, that there is an easement for the driveway, although a copy was not submitted.

Mr. Fabos acknowledged the potential issues related the speed of vehicles on the driveway and stated that he would consider reasonable measures, such as installing speed bumps to slow vehicle travel.

The Board discussed the lighting fixtures with the applicant. Mr. Fabos stated the existing fixtures on the south side of the house can be adjusted to help prevent glare or shining onto the adjacent property to the south. Mr. Langsdale expressed concern as to whether the existing lighting would properly light the area behind the garage where the trash is to be stored.

Mr. Fabos stated that the easement across the abutting parcel was intended to allow for driveway access to the subject property.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Langsdale seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

The Board determined that a revised lighting plan should be submitted and that all lights should be either downcast and/or designed to prevent glare onto adjacent properties. The revised lighting plan should identify how the fixtures will be operated (switched, light sensor, or motion sensor) and placed such that they adequately light entrances, walkways, parking areas and the dumpster.

The Board discussed the landscaping on the property and determined that there does not need to be a requirement to keep the existing mature vegetation, but rather that there be some landscaping be maintained on the property. The intent is to ensure that the landscaping be compatible with that of single family dwellings in the neighborhood.

The Board requested the applicant to submit a copy of the driveway easement.

The Board discussed the location of trash and recycling storage. Mr. Fabos stated that the use may not require a dumpster and believes that two (2) 55 gallon storage containers would probably be adequate. He noted that he may prefer to construct a small trash storage enclosure adjacent to the garage.

The Board reviewed the criteria of Sections 3.2040 and 3.2041 and determined that they are not applicable because the only exterior change to the building is a new door which the Board agreed was minor.

The Board discussed the existing swimming pool and determined that it shall be either secured under lock and key or removed for the safety of the residents.

The Board discussed which areas of the property could be made available for tenant recreation. Mr. Fabos stated that he will clarify the language of the lease to ensure that tenants have some reasonable outside recreational areas for their use.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses permitted by right because the dwelling is setback substantially from the road and maintains the appearance of an older single family farmhouse. There are no exterior changes proposed which could alter the residential appearance of the dwelling. The neighborhood consists of several single family dwellings along South East Street heading north towards Colonial Village. The flag lot property abutting immediately to the north is assessed as a two-family dwelling. The Misty Meadows Cluster Subdivision along Tamarack Drive contains a mix of single family and up to five (5) two (2) family dwellings.

10.382 – The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features because the only change to the exterior of the building is the installation of an additional exterior door. The exterior door is located along the north side of the building is not highly visible from the road or adjacent properties. The permit requires that all applicable lights be either downcast, or designed, to prevent light spillage onto adjacent properties.

10.383 & 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and provides convenient and safe vehicular and pedestrian movement within the site. The parking area includes an area to turn around to prevent vehicles from backing down the long driveway and onto South East Street. A total of nine (9) parking spaces are provided which (meets) or exceeds the requirements of Section 7.000 of two (2) parking spaces per unit. The number of spaces provided is greater than one (1) parking space per bedroom.

10.384 & 10.389 – Adequate and appropriate facilities would be provided for the proper operation and the proposal provides adequate methods of disposal and storage of waste, refuse and sewage. The trash and recycling storage will be enclosed and accessible to all tenants, a walkway to the new egress door will be installed, and the property is connected to Town water and sewer.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. A total of nine (9) parking spaces are provided which exceeds the requirements of Section 7.000 which requires two (2) parking spaces per unit and is more than one (1) parking space per bedroom. The only sign is a tenant parking sign which is less than the maximum size of 12 square feet allowed in the R-N District.

10.392 – The proposal provides adequate landscaping because, other than the driveway, there will be no change in the landscaping in the buffers of the site. The maintenance of the existing landscaping is addressed in the Management Plan. Conditions of the permit require that the landscaping be maintained in a manner which is similar to and compatible with an owner-occupied dwelling.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. Conditions of the permit require that all applicable exterior lighting be either downcast, or designed, to prevent intrusion of lights onto adjacent properties.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw and the Master Plan because the proposal provides the required number of parking spaces, will not substantially change the character of the building and provides the necessary facilities for two-family use. The proposal meets the goal of the Master Plan to “preserve and expand the number of affordable and moderately priced rental and ownership units in the housing stock”.

The Board agreed to the applicants request for waivers from the formal application submission requirements for the Special Permit.

Public Meeting – Zoning Board Decision

Ms. Greenbaum moved to APPROVE the application with conditions. Mr. Langsdale seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2011-00009, to create a two-family dwelling, as applied for by Betrandi LP, under Section 3.321 of the Zoning Bylaw, at 310 South East Street (Map 17B, Parcel 13, R-N/R-LD Zoning Districts and FC overlay district), with conditions.

BARBARA FORD

HILDA GREENBAUM

KEITH LANGSDALE

FILED THIS _____ day of _____, 2010 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2010.

NOTICE OF DECISION mailed this _____ day of _____, 2010
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2010,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00009, to create a two-family dwelling, as applied for by Betrandi LP, under Section 3.321 of the Zoning Bylaw, at 310 South East Street (Map 17B, Parcel 13, R-N, R-LD Zoning Districts and FC overlay district), with the following conditions:

1. The use of the dwelling shall consist of two (2) units, including a four (4) bedroom unit and a three (3) bedroom unit, with all rooms used as labeled in accordance with the floor plans stamped approved by the Zoning Board of Appeals on October 21, 2010. Any substantial changes to the floor plan shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.
2. There shall be no more than four (4) unrelated residents in each dwelling unit, as defined in Article 12 of the Zoning Bylaw.
3. Nine (9) parking spaces shall be provided onsite.
4. Prior to a Certificate of Occupancy for the second unit, a site plan showing the final parking arrangement, lighting and trash storage shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.
5. The existing or new landscaping shall be maintained in good condition and so that it is compatible with and appropriate to a residential neighborhood.
6. All applicable lighting shall either be downcast, or designed, to prevent light spillage onto adjacent properties.
7. The trash and recycling shall be stored in an enclosed structure, such as a shed or similar structure. Said receptacles shall be rodent and vermin resistant.
8. The existing swimming pool shall be either secured under lock and key, or removed for the safety of the residents.
9. Each dwelling unit shall be registered with the Board of Health in accordance with the Rental Registration requirements.
10. The name and telephone number of the property owner shall be recorded with the Health Department, Inspection Services and Fire Department.
11. There shall be a reflective street number sign installed adjacent to South East Street, which shall be visible in both directions.
12. This permit shall expire upon change of ownership of the property.

Barbara Ford, Acting Chair
Amherst Zoning Board of Appeals

DATE